

## Protecting Tenants at Foreclosure Act

According to the Seattle Post Intelligencer, Washington saw a 94% increase in home foreclosures filed in July 2009 compared to July 2008. In response to this growing local and national crisis, Congress and the Washington Legislature enacted new eviction protections for tenants who are renting homes owned or lost by defaulting landlords.

**The Protecting Tenants at Foreclosure Act of 2009**, a federal law effective May 20, 2009, provides post-foreclosure protections for tenants whose homes are sold at a foreclosure sale. The law requires every immediate successor in interest – the purchaser at foreclosure – to provide all “bona fide” tenants a minimum of 90 days to vacate prior to initiating eviction. This law applies to every foreclosed property occupied by a bona fide renter, regardless of the type of loan or other security interest on the foreclosed rental property.

A bona fide tenant means:

- the tenant cannot be the mortgagor or the child, spouse, or parent of the mortgagor,
- the lease or tenancy must be the result of an arms-length transaction, and
- the rent required under the lease cannot be substantially less than fair market rent for the property unless the rent is subsidized by a federal, state or local subsidy.

If a tenant has been renting on a month-to-month basis, the tenant must receive a minimum of 90 days to vacate before the purchaser of a foreclosed property may initiate eviction. The 90-day notice applies even if the purchaser intends to occupy the property.

If a tenant has been renting under a lease and more than 90 days remain under the lease term, the tenant is entitled to stay through the end of the lease term unless the purchaser:

- will occupy the unit as a primary residence, and
- has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.

In all cases, the protections provided by this new federal law are minimum protections and do not supersede any greater protections (longer advance notice or additional protections) provided by state or local law.

**At the state level**, the Washington Legislature passed a law, effective July 26, 2009, requiring the foreclosing party to send tenants a written notice at least 90 days before the date of the foreclosure auction. If the owner of the home is unable to remedy the default and the home is sold at foreclosure, the foreclosing party must provide the tenant in possession at least 60 days written notice before initiating eviction. Thus, under Washington law, the foreclosing party must comply with two distinct notice periods – the 90-day pre-foreclosure notice and the 60-day post-foreclosure eviction notice.

The cumulative effect of the new laws means that a foreclosing party must provide Washington tenants with a 90-day pre-foreclosure notice under state law and a purchaser at foreclosure must provide a 90-day post-foreclosure eviction notice under federal law.

Under both the state and federal law, tenants must continue to comply with their obligations under the remaining term of any lease or rental agreement by not committing any waste or nuisance. However, the state and federal laws diverge with respect to whether the tenant must continue paying rent after the foreclosure: under the state law, the tenant can only be evicted for waste and nuisance during the post-foreclosure period while the federal law obligates the tenant to pay rent to the purchaser at foreclosure during the post-foreclosure period.

**For more information about these new laws:**

- The federal Protecting Tenants at Foreclosure Act can be found at [S. 896, Pub. L. No. 111-22, §§ 701-704](#)
- The new state law, SB 5810, can be found at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202009/5810.SL.pdf>

Additionally, the following organizations provide on-line information about the laws:

- National Low Income Housing Coalition,  
<http://www.nlihc.org/template/page.cfm?id=227>
- Columbia Legal Services,  
<http://www.washingtonlawhelp.org/WA/StateChannelResults.cfm/County/%20City/%20demoMode/%3D%201/Language/1/State/WA/TextOnly/N/ZipCode/%20/LoggedIn/0/iSubTopicID/1/iProblemCodeID/1621200/sTopicImage/g-housing.gif/iTopicID/865/ichannelid/7/bAllState/0>